

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

In re Application)	Examiner: A. PIZIALI
HUE SCOTT SNOWDEN ET AL.)	
)	Art Unit: 1771
Serial No.: 10/723,408)	
)	Deposit Account: 04-1403
Confirmation No.: 2660)	
)	Customer No.: 22827
Filed: NOVEMBER 25, 2003)	

Title: METHOD OF TREATING NONWOVEN FABRICS WITH NON-IONIC
FLUOROPOLYMERS

1. ☐ **NOTICE OF APPEAL:** Pursuant to 37 CFR 41.31, Applicant hereby appeals to the Board of Appeals from the decision dated _____ of the Examiner twice/finally rejecting claims _____.
2. ☐ **BRIEF** on appeal in this application pursuant to 37 CFR 41.37 is transmitted herewith (1 copy).
3. ☐ An **ORAL HEARING** is respectfully requested under 37 CFR 41.47 (due within two months after Examiner's Answer).
4. ☒ Reply Brief under 37 CFR 41.41(b) is transmitted herewith (1 copy).
5. ☐ "Small entity" verified statement filed: [] herewith [] previously.

6. **FEE CALCULATION:**

	Fees
If box 1 above is X'd enter \$ 510.00	\$ <u>0.00</u>
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PETITION is hereby made to extend the original due date of _____, hereby made for an extension to cover the date this response is filed for which the requisite fee is enclosed (1 month \$120; 2 months \$460; 3 months \$1,050; 4 months \$1,640, 5 months \$2,230) \$ 0.00

SUBTOTAL: \$ 0.00

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Less any previous fee paid for prior Notice of Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

Less any previous fee paid for submitting Brief on prior Appeal since Board did not render a decision on the merits. MPEP § 1204.01 - \$ 0.00

SUBTOTAL: \$ 0.00

If "small entity" verified statement filed ☐ previously,
☐ herewith, enter one-half (½) of subtotal and subtract - \$ 0.00

TOTAL FEE ENCLOSED: \$ 0.00

- ☐ Fee enclosed.
- ☐ Charge fee to our Deposit Account/Order Nos. in the heading hereof (for which purpose one additional copy of this sheet is attached)
- ☐ Charge to credit card
- ☐ Fee NOT required since paid in prior appeal in which the Board of Appeals did not render a decision on the merits.

The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any fees in addition to the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (deficiency only) now or hereafter relative to this application and the resulting official document under Rule 20, or credit any overpayment, to our Account No. shown in the heading hereof. This statement does not authorize charge of the issue fee in this case.

DORITY & MANNING ATTORNEYS AT LAW, P.A.

ADDRESS:

Post Office Box 1449
Greenville, SC 29602 USA
Customer ID No.: 22827
Telephone: (864) 271-1592
Facsimile: (864) 233-7342

By: JAMES M. BAGARAZZI Reg. No: 29,609

Signature: James M. Bagarazzi

Date: Dec 4, 2008

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APPELLANT'S REPLY BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR § 41.41, Appellant hereby submits its reply brief to the Examiner's Answer mailed on November 10, 2008, for the subject application.

In the Response to Argument section (10) on page 9 of the Examiner's Answer, the Examiner respectfully disagrees that: (1) Gilbert and Potts disclose non-analogous art due to Gilbert's concern with larger hollow tube forms and the concern of Potts with very small fibers; (2) the concerns of Gilbert do not relate to the material of Potts; (3) Potts teaches that all of the additive migrates to the surface upon fiber formation.

However, dealing with the third disagreement first, it becomes apparent that the Examiner's Answer incorrectly interprets what Potts is saying at column 18, lines 14-27, which states (emphasis added):

A mixture of an additive and a thermal plastic polymer, which additive imparts to the surfaces of said fibers, as a consequence of the preferential migration of said additive to the surfaces of said fibers **as they are formed**, at least one characteristic which is difference from the surface characteristics of fibers prepared from said thermal plastic polymer alone, said preferential migration taking place spontaneously upon the formation of said fibers **without the need for a post-formation treatment of any kind**;

Potts states unequivocally that the **migration** takes place **spontaneously** upon the formation of the fibers. Potts does not say that it is the onset of the migration that takes place spontaneously. Indeed, Potts does not speak of the **onset** of the migration at all. Instead, Potts speaks of the migration as a completed event.

Moreover, Potts speaks of the migration as occurring **spontaneously** upon the formation of the fibers **without the need for a post-formation treatment** of any kind. Certainly, it must be beyond dispute that waiting three days or more for an antistatic agent to migrate fully to the surface must be considered a **post-formation treatment** of some kind. And yet, Potts states that **no post-formation treatment of any kind is required** due to the fact that the preferential migration **fully** takes place **spontaneously**


upon the formation of the fibers that are the concern of Potts. Thus, the Examiner's Answer's conclusion that Potts allows for a post-formation treatment of waiting three days for the additive to migrate fully to the surface (as the Examiner's Answer acknowledges Gilbert teaches), must be clear error on the part of the Examiner's Answer's interpretation of the teaching of Potts. Moreover, this clear error undermines the entire basis of the rejection of Appellant's claims.

Because Gilbert concerns itself with the aforementioned three day or longer wait for the agents to migrate to the surface of the Gilbert tubes, these two references, Gilbert and Potts, are self-evidently dealing with non-analogous arts. Moreover, having established this incongruity, it behooves the Office to show in Potts some concern with color problems that might motivate abandonment of the internal anti-static agent in favor of an externally applied anti-static agent. Since the Examiner's Answer admits that Potts fails to mention any such color problems, the failure of the Office in this regard also must be admitted.

Respectfully submitted,

DORITY & MANNING, P.A.

DATED: Dec 4, 2008


James M. Bagarazzi
Reg. No. 29,609
P.O. Box 1449
Greenville, S C 29602-1449
(864) 271-1592